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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,126	12/14/2001	James H. Keithly	876P146	9008
26568	7590	10/12/2005	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/017,126

Applicant(s)

KEITHLY ET AL.

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-9,11,12,18-20,22-26,28,29 and 31-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-9, 11-12, 18-20, 22-26, 28-29, 31-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1, 3, 5-9, 11-12, 18-20, 22-26, 28-29, 31-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no basis in the specification as originally filed, for the terms "substantially untreated". Upon applicant pointing out where this occurs, this rejection will be withdrawn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3, 5-9, 11-12, 18-20, 22-26, 28-29, 31-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"citrus feed supplement citrus particles" lacks antecedent basis.

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In the claims, "substantially untreated" is indefinite, particularly when the specification does not define what this means. On the other hand, the specification show that the citrus byproduct was dried and flaked.

The specification indicates that the citrus byproduct is dried citrus peel or pulp, and yet, citrus byproduct is listed with citrus peel or pulp (claim 1, lin3-4 and 6).

Therefore, it is not clear what "citrus byproduct" covers and what byproducts applicant intends to include by these terms. This is particularly important in view of the references of record.

### ***Claim Rejections -35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5-9, 11-12, 14-26, 28-29, 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deyoe et al. in view of Henderson et al. (US Patent 4560561) and Moore, Jr. (US Patent 5928403).

The reference teaches feeding broilers up to 2.5% bioflavanoids. Bioflavonoids are inherently present in citrus peels or any citrus byproduct, and is known to be a beneficial byproduct of such. (See specification). See page 1088 in the reference.

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The reference does not teach poultry being housed in confining spaces. However, it is well known that to produce broilers, poultry have to be housed in confining spaces, and therefore this is inherent. The reference does not show particles or that the pellet size. The specification also states that the flavonoids, food-grade acids, etc. occur naturally in citrus products. Henderson et al. teach pellets of feed supplement that comprise citrus molasses, in a size 1/16" in diameter. Moore shows that calculating feed conversions and ammonia volatilizations are also commonplace in poultry farming. It would have been obvious to one of ordinary skill in the art to extend such teachings in order to make such calculations, shown by prior art, Deyoe being drawn to poultry raising. To optimize particle feed size is also within the ambit of the skilled worker. As for the increase of HDL levels, it is well settled that a patent cannot be properly granted for [an invention] which would flow naturally from the teaching of the prior art. *American Infra-Red Radiant Co. v. Lambert Indus., Inc.*, 360 F.2d 977, 986 [149 USPQ 722 (CCPA 1958)], (8th Cir.) (quoting *Application of Libby*, 255 F.2d 412 [118 USPQ 194 (CCPA 1958)], *cert. denied*, 385 U.S. 920 [ 151 USPQ 757 ] (1966).

4. Claims 1, 3, 5-9, 11-12, 14-26, 28-29, 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boushy et al.<sup>1</sup> ("Poultry Feed from Waste", Chap. 6, pages 218-224, 1994) or Coleman et al.<sup>2</sup> (J. Agric. Food Chem., vol. 25(4), pages 971-73, 1977) or Eldred et al.<sup>3</sup> (Nutr. Reports Intl., vol. 14, pages 139-145, 1976) in view of Henderson et al. (US Patent 4560561) and Moore, Jr. (US Patent 5928403).

At page 221, the reference teaches that citrus pulp in levels higher than 7.5% is not beneficial to poultry. At page 222, feedstuffs comprising dried citrus pulp, for broilers at an inclusion level of 7.5% of the diet was beneficial. Also, the reference states in the last paragraph that the optimum level of dried citrus peel in the diet is 10%. At page 223, citrus sludge at an amount less than 7.5% was useful when included in broiler diets.

Reference 2 teaches that broilers thrived with 0-20% dried citrus sludge, when the diet contained 7.5% or less of the sludge. See page 972, second col., last few lines.

The teaching in reference 3 is similar to reference 2. See abstract.

The references do not teach poultry being housed in confining spaces. However, it is well known that to produce broilers, poultry have to be housed in confining spaces, and therefore this is inherent. The reference does not show particles or that the pellet size. The specification also states that the flavonoids, food-grade acids, etc. occur naturally in citrus products. Henderson et al. teach pellets of feed supplement that comprise citrus molasses, in a size 1/16" in diameter. Moore shows that calculating feed conversions and ammonia volatilizations are also commonplace in poultry farming. It would have been obvious to one of ordinary skill in the art to extend such teachings to make such calculations and combine this with the teaching of the primary references that show that the addition of citrus by products up to 7.5% in poultry feeds is beneficial, is applied to poultry raising. To optimize particle feed size, dry the sludge to give solid particles, etc. is also within the ambit of the skilled worker. As for the increase of HDL levels, it is well settled that a patent cannot be properly granted for [an invention] which

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would flow naturally from the teaching of the prior art. *American Infra-Red Radiant Co. v. Lambert Indus., Inc.*, 360 F.2d 977, 986 [149 USPQ 722 (CCPA 1958)], (8th Cir.) (quoting *Application of Libby*, 255 F.2d 412 [118 USPQ 194 (CCPA 1958)], cert. denied, 385 U.S. 920 [ 151 USPQ 757 ] (1966).

### ***Response to Arguments***

Applicant's arguments filed 7/27/05 have been fully considered but they are not persuasive.

The entire amendment appears to be based on applicant's contention that the examiner suggested that the claims 1 and 20 be amended as set forth and that the claims would then be allowed. The examiner neither recalls such a suggestion/commitment nor is there any record of this in the interview summary, which was reviewed by applicant's representative before it was signed.

The applicability of the Deyoe et al. reference has been explained in the previous Office action. The rejections are being maintained for the same reasons. The citrus byproduct of Deyoe et al., bioflavanoids, reads on the citrus byproduct of the instant claims.

As for the 103 rejection, the combination of references suggests that broilers thrived on a diet containing 7.5% or less of citrus sludge. Citrus sludge is part of the "waste during citrus extraction", and therefore applicant's criticism of the reference of Eldred et al. is confusing. The remaining references have been applied to show the

other limitations and have clearly been enunciated in the rejection itself. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.



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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
C. SAYALA  
Primary Examiner  
Group 1700.